

APPEAL NO. 040726
FILED MAY 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 2, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a private insurance policy. The claimant appealed the hearing officer's injury determination, asserting that the hearing officer abused her discretion by considering evidence that "was not argued during the [hearing]," drew her own incorrect medical conclusions, and did not consider all of the evidence presented at the hearing. The respondent (carrier) responded, urging affirmance. The hearing officer's determination regarding election of remedies has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant failed to establish that she sustained a compensable injury on _____. This issue presented a question of fact for the hearing officer to resolve based upon a weighing of the medical evidence. Texas Workers' Compensation Commission Appeal No. 012723, decided December 10, 2001. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We note that although the claimant asserts that the hearing officer abused her discretion because she based her decision "upon evidence that was not argued during the [hearing] and drew her own incorrect medical conclusion/diagnosis from the evidence provided" and "ignored" certain other evidence which tends to support the claimant's claim, we perceive no error. As stated above, it is the hearing officer's responsibility to review the evidence offered, including the medical evidence, and reach a determination in the case. Upon review of the record, we find no indication that the hearing officer improperly considered matters outside of the record, or that she did not consider all of the evidence presented.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge